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7590		03/24/2006	EXAMINER	
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Houston, TX 77054		PAPER NUMBER		
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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/603,020	Applicant(s) DAVIS, BURNETT	
	Examiner Gregory W. Adams	Art Unit 3652	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 December 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10 June 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 2, 3, 15, 20 & 22-23 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 2 recites the limitation "the recess" in line 3. There is insufficient antecedent basis for this limitation in the claim. See also claim 22, line 22.

Further, with respect to claim 3 which recites an "internal cavity...forming an orifice" its unclear how an internal cavity defining a recess is also an orifice where a recess is defined as "an indentation or small hollow" and an orifice is defined as "an opening to a cavity or passage". www.dictionary.com. To use both in claim 3 is contradictory. Thus, for examination purposes it is presumed that an orifice precludes a recess.

With respect to claim 15, lines 2-4, it is unclear how a U-shaped hook, e.g. not a complete circle, can encircle a container top. For examination purposes, it is presumed that a U-shaped hook will accommodate a substantial circumference of a container top, but not all a circumference. See also claim 23, lines 21-23.

Claim 20 recites the limitation "the hand assembly" in line 8 and "the bar member" in line 9. There is insufficient antecedent basis for these limitations in the claim.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Claim 20 is rejected under 35 U.S.C. 102(b) as being anticipated by Perry et al. (US 4,036,382) (previously cited).

With respect to claim 20, referring to FIGS. 1-13 Perry et al. disclose a method for lifting and transporting a container comprising providing a hand cart 20 having a base frame 40, wheel 36, cradle 41, elongated bar 21, 24, 25, 26, handle 22, 23 (col. 3, Ins. 36-38) mounted upon the bar top 22, 23 (col. 3, Ins. 36-38), arm structure with a catch mechanism 44 and a bumper mechanism 44, lever mechanism (col. 5, Ins. 36-37), operably connected to an arm structure 44, a method comprising placing a hand-cart (col. 5, Ins. 18-25), placing a hand on a hand assembly (col. 5, Ins. 18-25), placing a corresponding foot against a rear side of a bar member (col. 5, Ins. 18-25), pushing a hand assembly forward and pushing a base frame (col. 5, Ins. 18-25), pulling a lever mechanism to raise an arm structure to allow a container to sit, and releasing a lever mechanism (col. 5, Ins. 18-25).

2. Claims 1-3 & 6-11 are rejected under 35 U.S.C. 102(b) as being anticipated by Burkett (US 2002/0074755).

With respect to claims 1 & 10-11, Burkett discloses a hand cart for lifting and transporting a container 14 comprising a base frame 34, cradle 59, elongated bar 32,

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arm structure 36 having a first edge 44 mounted to an elongated bar 32 exterior edge at an intermediate point, bumper mechanism (indicated generally as 66), catch mechanism 62, 64, and hand assembly 46. With respect to a bumper mechanism "for contacting the neck of the container" Applicant is respectfully reminded that claim language consisting of functional language and/or intended use phrasing is given little, if any, patentable weight as the apparatus must merely be capable of functioning, or being used, as claimed. See MPEP 2112.02, 2114. Here, Burkett's bumper is certainly capable of applying a forward force such on a container.

With respect to claims 2 & 3, Burkett discloses an internal cavity defining an orifice (indicated generally as 36).

With respect to claim 6, Burkett discloses a cradle 59 dimensioned to fit a container bottom.

With respect to claims 7 & 8, Burkett discloses a vertical plate 59 and a horizontal plate 58.

With respect to claim 9, Burkett discloses an arm having a polygonal shape.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Burkett (US 2002/0074755) in view of Butzen (US 5,738,480).

With respect to claim 4, Burkett does not disclose a pair of parallel spaced apart support members. Butzen discloses a pair of parallel spaced apart support members 13, 14 such that "the hand truck can be operated in the customary manner by tilting the handles 13 and 14 so as to pivot around axle 20, and thus the heavy object may be moved from one place to another." C3/L63-67. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the handle assembly of Burkett to include a pair of parallel spaced apart support members and grips, as per the teachings of Butzen, to operate a hand truck in a customer manner.

4. Claims 5, 12-14, 20-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Burkett (US 2002/0074755) in view of Griffith et al. (US 3,358,863).

With respect to claims 5, 12-14 Burkett does not disclose a lever mechanism or arm rotation. Griffith et al. discloses a lever mechanism 16 connected to an arm structure 27 first edge to position a recess (indicated generally as 28) on top of an object to be transported and prior to cradle 3 insertion under said object. C1/L35-47. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Burkett's arm to include a lever, as per the teachings of Griffith et al., for lifting an object during cradle insertion.

With respect to claim 20, Burkett discloses a method of lifting and transporting a container from an upright position comprising:

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providing a base frame, cradle 41, elongated bar 2, arm structure 7, bumper mechanism (indicated generally as 7), catch mechanism 5, 7 and means for engaging a catch 63, and hand assembly 22.;

placing a hand-cart perpendicular to a floor and parallel to a container;

placing a hand on a hand assembly;

placing a foot against a rear side of a bottom bar member;

pushing a hand assembly forward such that a bumper contacts a container neck and simultaneously pushing a base frame forward with a foot to slide a base frame underneath a container bottom;

Burkett does not disclose pulling a lever to raise an arm to allow a container to sit upright on a base frame and releasing a lever for a catch mechanism to engage a container top. Griffith et al. discloses pulling a lever 16 to raise an arm 27 (to position a recess 28) allowing a container to sit upright on a base frame and releasing a lever for a catch mechanism to engage a container top. C1/L35-47. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Burkett's arm to to allow a container to sit upright on a base frame and releasing a lever for a catch mechanism to engage a container top, as per the teachings of Griffith et al., for lifting an object during cradle insertion.

With respect to claim 21, Burkett discloses a hand cart for lifting and transporting a container 14 comprising a base frame 34, cradle 59, elongated bar 32, arm structure 36 having a first edge 44 mounted to an elongated bar 32 exterior edge at an intermediate point and an orifice, bumper mechanism (indicated generally as 66), catch

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mechanism defining an 62, 64, and a hand assembly 46. Burkett does not disclose a lever mechanism or arm rotation. Griffith et al. discloses a lever mechanism 16 connected to an arm structure 27 first edge to position a recess (indicated generally as 28) on top of an object to be transported and prior to a cradle 3 insertion under said object. C1/L35-47. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Burkett's arm to include a lever, as per the teachings of Griffith et al., for lifting an object during cradle insertion.

5. Claims 15 & 23 is rejected under 35 U.S.C. 103(a) as being unpatentable over Burkett (US 2002/0074755) in view of Le Duff (US 3,868,033) (previously cited).

With respect to claim 15, Burkett does not disclose a U-shaped hook. Le Duff discloses a U-shaped hook 102 extending from an arm 95 that allows a neck of a bottle to be inserted when it is place on cradle 88 such that a lifting truck is particularly adapted for transporting and moving containers and facilitating the inversion. C1/L34-42. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the apparatus of Burkett to include a U-shaped hook, as per the teachings of Le Duff, to lift and transport water bottles.

Le Duff does not disclose an arm having a U-shaped hook extending from a side edge but discloses a hook having a side opening, e.g. approaches a container neck from a direction perpendicular to a forward direction, to secure said container neck for transportation and inversion. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Burkett's arm to

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include a U-shaped hook extending from a side edge, as per the teachings of Le Duff, to support a container neck during transportation and inversion.

With respect to claim 23, Burkett discloses a hand cart for lifting and transporting a container 14 comprising a base frame 34, cradle 59, elongated bar 32, arm structure 36 having a first edge 44 mounted to an elongated bar 32 exterior edge at an intermediate point, bumper mechanism (indicated generally as 66), catch mechanism 62, 64, and hand assembly 46. With respect to a bumper mechanism "for contacting the neck of the container" Applicant is respectfully reminded that claim language consisting of functional language and/or intended use phrasing is given little, if any, patentable weight as the apparatus must merely be capable of functioning, or being used, as claimed. See MPEP 2112.02, 2114. Here, Burkett's bumper is certainly capable of applying a forward force such that a container will tilt 30 degrees. Burkett does not disclose a U-shaped hook. Le Duff discloses a U-shaped hook 102 extending from an arm 95 that allows a neck of a bottle to be inserted when it is place on cradle 88 such that a lifting truck is particularly adapted for transporting and moving containers and facilitating the inversion. C1/L34-42. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the apparatus of Burkett to include a U-shaped hook, as per the teachings of Le Duff, to lift and transport water bottles.

6. Claim 16 & 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Burkett (US 2002/0074755) in view of Le Duff (US 3,868,033) and Griffith et al. (US 3,358,863).

With respect to claim 16, Burkett does not disclose a lever mechanism or arm rotation. Griffith et al. discloses a lever mechanism 16 connected to an arm structure 27 first edge to position a recess (indicated generally as 28) on top of an object to be transported and prior to cradle 3 insertion under said object. C1/L35-47. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Burkett's arm to include a lever, as per the teachings of Griffith et al., for lifting an object during cradle insertion.

With respect to claim 17, Burkett discloses an elongated bar of cylindrical shape.

7. Claim 18-19 & 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Burkett (US 2002/0074755).

With respect to claims 18-19, Burkett does not disclose an elongated bar having vertical edges bent backward or hollow rectangular casing. However, it is well known to vent edges and have hollow, e.g. tubular, construction to provide safety and strength which is pertinent to Burkett's handling of heavy cylindrical containers. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the elongated bar of Burkett to include vertical edges bent backward or hollow rectangular casing for strength and safety when handling heavy containers.

With respect to claim 22, Burkett discloses a hand cart for lifting and transporting a container 14 comprising a base frame 34, cradle 59, elongated bar 32, arm structure 36 having a first edge 44 mounted to an elongated bar 32 exterior edge at an intermediate point, bumper mechanism (indicated generally as 66), a catch mechanism

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that defines an orifice 62, 64, and hand assembly 46. Burkett does not disclose a recess situated within the underside portion of an arm structure but does disclose an orifice that accommodates a container top circumference 20 without said container top 20 protruding past an arm structure top surface (see FIG. 1). Burkett locks a container between an arm 36 and cradle 24 (Para. [0032]) such that arm structure 36 engages a container top 20 to prevent horizontal or lateral movement of the top relative to the arm 36. Para. [0010]. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Burkett's apparatus to include a recess to prevent lateral movement.

Response to Arguments

Applicant's arguments with respect to claim 1, 2, 3, 5, 10, 12-16, 21 have been considered but are moot in view of the new ground(s) of rejection.

With respect to claim 20, Applicant argues that Perry does not disclose a manual method. At some point, Perry requires manual intervention as a hand truck must be manipulated manually else handles 22 serve no purpose. Thus, Perry's method is manual.

Conclusion

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory W. Adams whose telephone number is (571) 272-8101. The examiner can normally be reached on M-Th., 8:00-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eileen Lillis can be reached on (571) 272-6928. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



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